

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

NEXT IT CORPORATION, a
Washington Corporation,

Plaintiff,

v.

SHANTANU ROY and JENNIFER
ROY, husband and wife; JOSH
KNOWLES, a single person, and
NDALL SOLUTIONS, LLC, an
Idaho corporation,

Defendants.

NO. CV-05-380-LRS

**ORDER GRANTING TEMPORARY
RESTRAINING ORDER AND ORDER TO
SHOW CAUSE; SETTING FURTHER
STATUS CONFERENCE FOR HEARING
ON PLAINTIFF'S MOTION FOR
EXPEDITED DISCOVERY AND
ESTABLISHING SCHEDULE FOR
HEARING ON PRELIMINARY
INJUNCTION**

Plaintiff is a Washington corporation in the business of software development and services. Plaintiffs have filed a Verified Complaint(Ct. Rec. 1), seeking a preliminary and permanent injunction and other relief, including redress for misappropriation of trade secrets and breach of contract associated with the defendants' alleged creation of a competing enterprise and taking of plaintiff's proprietary information. BEFORE THE COURT is Plaintiffs' Motion for Temporary Restraining Order, Expedited Discovery and Order to Show Cause filed December 1, 2005 (Ct. Rec. 3). On December 2, 2005, a telephonic hearing was held. Todd Reuter participated on behalf of the Plaintiff, John Guin participated on behalf

1 of Defendants Roy and Ndall, Mike McMahon participated on behalf of
2 Defendant Knowles, and Rob Grier participated on behalf of third-party
3 Delex.

4 The Court has reviewed all pleadings contained in the Court file,
5 including the verified complaint and exhibits thereto, the memorandum
6 filed in support of Plaintiff's motion, the Affidavit of Jim Hereford and
7 the motion. In addition, the Court has reviewed the declarations
8 produced at the time of the hearing, including the Declaration of Garnett
9 "Sandy" Clark (Ct. Rec. 12) and the declaration of Defendant Josh
10 Knowles. Having considered these pleadings and now having received oral
11 argument and being advised in the premises finds that:

12 a. This Court has jurisdiction of the subject matter of this case
13 and of all the named parties.

14 b. The Plaintiff has demonstrated a reasonably sufficient
15 likelihood of ultimate success in establishing that the Defendants have
16 engaged, and are continuing to engage, in acts and practices that violate
17 state and federal law, as well as the parties employment and non-compete
18 agreements.

19 c. There is good cause to believe that an immediate irreparable
20 injury, loss, or damage will result to the Plaintiff, to wit, the loss
21 of trade secrets and proprietary information, as well as the potential
22 loss of customers and future business contracts, unless Defendants are
23 immediately restrained and enjoined by order of this Court. The trade
24 secrets and proprietary information includes a valuable computer source
25 code, which is the product of extensive research and development efforts
26 of the Plaintiff. The Defendants have had access to this information and

1 appear poised to take and use that information, thus causing immediate
2 and irreparable injury, loss or damage to plaintiff.

3 d. Weighing the equities and considering the Plaintiff's
4 likelihood of ultimate success, a temporary restraining order would be
5 in the public interest.

6 e. Though the Defendants were all contacted in advance of the
7 hearing and participated in the hearing, counsel had very little time to
8 consider the Plaintiff's pleadings by the time of the hearing. The Court
9 considers this Order as granted without meaningful notice because the
10 injury complained of appears imminent and irreparable. The Individual
11 Defendants had access to key source code and customers. They have the
12 expertise to use that code and have formed a competing enterprise for the
13 apparent purpose of doing so. The loss of control over that code and the
14 loss of customers cannot be fully compensated for with money damages.
15 Further, Plaintiff has or will post bond to protect the interests of the
16 Defendants in an amount the parties have expressly agreed to.

17 Based upon the above considerations,

18 **IT IS THEREFORE ORDERED**, that Plaintiff's Motion for Temporary
19 Restraining Order, Expedited Discovery, and Order to Show Cause (Ct. Rec.
20 3) is **GRANTED IN PART**. That portion of Plaintiff's motion requesting
21 Expedited Discovery shall be **DEFERRED** until Wednesday, **December 7, 2005**.

22 **IT IS FURTHER ORDERED**,

23 that the Defendants and each of them, including all persons in
24 active concert and participation with them, are hereby:

1 1. Enjoined from using, disclosing or transferring any Next IT
2 proprietary information, trade secrets, or other confidential business
3 information obtained during the Defendants' employment with Next IT;

4 2. Enjoined from soliciting, calling on or providing competing
5 services for any person or entity for whom Next IT provided services
6 during Defendant's term of employment with Next IT, said services to
7 include the design, coding, testing, installation, service or maintenance
8 of products in Next IT's commercial space, including agent technology,
9 indexing, web scraping, web applications, security, and artificial
10 intelligence;

11 3. Enjoined from soliciting, calling or providing competing
12 services for any person or entity whose name Defendant became aware of
13 during their employment with Next IT;

14 4. Enjoined from directly or indirectly recruiting or encouraging
15 any employee of Next IT to accept employment or other business
16 relationship with an employer, person or entity other than Next IT;

17 5. Enjoined from destroying, altering, erasing, deleting,
18 fragmenting, disposing or otherwise spoiling any documents, electronic
19 data, computer and related equipment, materials, or other vehicle for
20 information storage that may be relevant to the determination of the
21 issues presented in this lawsuit; and, is further ordered to preserve all
22 written, electronic or other tangible communications created or received
23 during the period Jan. 1, 2004 to present;

24 6. Ordered to appear before this court at the time and place to be
25 ordered by the Court in a following order and show cause why a
26 preliminary injunction should not be entered pending final judgment of

1 the court in this action. The Court will establish the time and place
2 of the preliminary injunction hearing at a follow up telephonic hearing
3 on **WEDNESDAY, DECEMBER 7, 2005 AT 2:00 P.M. The parties shall call the**
4 **Court's public conference line (509-376-1330) at the time of the hearing.**

5 At that time the parties shall be prepared to discuss the
6 Plaintiff's motion for expedited discovery and the need to preserve all
7 relevant evidence for use in this action. The parties shall also, if
8 possible, submit a joint proposed scheduling order in advance of the
9 hearing which addresses pre-hearing deadlines including, but not limited
10 to, the filing of any cross-motions and briefing for the preliminary
11 injunction hearing, the exchange of witness and exhibit lists, and the
12 submission of Proposed Findings of Fact and Conclusions of Law.

13 IT IS FURTHER ORDERED that in accordance with the representations
14 made by counsel for third-party Delex, Delex is ordered to comply with
15 paragraph numbers one, five and six set forth above.

16 **IT IS FURTHER ORDERED** that Next IT shall post security in the amount
17 of **\$2,000** for the payment of Defendants' costs and damages that may be
18 incurred in the event Defendants are found to be wrongfully enjoined or
19 restrained by this Order. Such security shall be posted no later than
20 **MONDAY, DECEMBER 5, 2005 at 5:00 p.m..**

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1 The Temporary Restraining Order shall expire on **December 15, 2005**
2 **at 5:00 p.m.**, unless otherwise Ordered by the Court. The parties may
3 stipulate to extend this TRO without filing a motion with this Court, but
4 shall notify chambers of any change.

5 **IT IS SO ORDERED.**

6 The District Court Executive is directed to file this Order and
7 provide copies to counsel.

8 **DATED** this 2nd day of December, 2005 at 5:22 p.m..

9
10 s/Lonny R. Suko

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LONNY R. SUKO
UNITED STATES DISTRICT JUDGE